

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: ZIMMER NEXGEN KNEE )  
IMPLANT PRODUCTS LIABILITY ) MDL NO. 2272  
LITIGATION )  
)  
This Document Relates to All Cases ) Master Docket Case No. 1:11-cv-05468  
)  
) Hon. Rebecca Pallmeyer

**PLAINTIFFS REPLY TO DEFENDANTS RESPONSE TO PLAINTIFFS'  
APPLICATIONS FOR LEAD COUNSEL AND PLAINTIFFS STEERING COMMITTEE**

Defendants' opposition to the steering committee proposed by Plaintiffs is virtually unprecedented. A cohesive group of lawyers with sufficient resources to appropriately represent the Plaintiffs' interest is essential to this litigation to meet the requirements of the *Manual of Complex Litigation* and counsel's ethical obligations to adequately and zealously represent their clients. In short, Defendants have no real standing to determine the ordering of Plaintiffs organization, which the *Manual of Complex Litigation* encourages. Instead, Defendants' opposition is a pretext for their unstated goal: to hamper Plaintiffs' workforce and financial resources which are the hallmarks of a Plaintiff Steering Committee (PSC) in a mass tort MDL.

Historically, courts have appointed PSCs of similar size in other products liability MDLs. A sixteen member appointment is the norm rather than the exception in cases like this. Most PSCs in these types of MDLs consist of more than sixteen members. Defendants' reliance on the current number of filed cases is misguided. The more important factor to take into consideration is the potential size of the litigation and the extent of discovery and other pretrial work. Plaintiffs' counsel have taken an inventory and believe that ultimately this litigation will have more than 1,000 cases. Moreover, when there is already a unified working group in place the

court should strongly consider and encourage the continuation of such a group so long as its members are qualified.

The issue of the organization of Plaintiffs' counsel in products liability MDLs is one that is traditionally reserved for the combination of internal decision making by Plaintiffs' counsel and consideration from the court. Defendants' interference in that process is unjustified.

**A. A Sixteen Member Leadership Committee is Reasonable in Size in a Products Liability Action Against one of the World's Largest Device Manufacturers**

There are many factors to be taken into consideration when appointing a leadership committee; however, the most important of them is "achieving efficiency and economy without jeopardizing fairness to the parties." *Manual for Complex Litigation (Fourth)* § 10.221.

Unlike defense counsel, who will draw from long-standing and cohesive organization, plaintiffs' counsel must quickly merge to create a new strategic alliance to litigate against one of the largest and best financed law firms in the world; truly an amazing process filled with the potential for inequity. The PSC needs to be structured to compete on a level playing field with its colleagues on the other side of the "V". This process, at least in part, needs to be guided by considering the stature of opposing counsel. Plaintiffs' counsel are faced with a "David and Goliath" dynamic on a variety of levels. On the "David" side of the equation, primarily small plaintiff firms that often compete against each must group together to litigate against a powerful international corporate entity. It's akin to starting a 100 yard dash against a world class athlete that has a 50 yard head start.

A steering committee of reasonable size is necessary in order to pull together Plaintiff resources to effectively and efficiently litigate this MDL. Unlike an international defense firm and a multi-billion dollar company, the law firms in the proposed leadership committee are plaintiffs firms who do not have unlimited resources. Appointments to the PSC confirm court

ordered responsibility and commitment to time, money and resources. Without such appointments, firms are typically not willing to invest their resources because they have no influence as to the direction of the litigation. The investment is substantial. Zimmer uses *In re: Trasylol Product Liability Litigation*, MDL 1928 as an example. In that litigation over 23 million pages of documents were produced, requiring an expenditure of over \$1,000,000.00 to store the documents in an electronically searchable fashion. This storage and retrieval system was just one of the many costs incurred by the Plaintiffs steering committee and was essential to the successful prosecution of the case. A three member PSC as proposed by Defendants would be insufficient to support a litigation of this magnitude.

The proposed PSC is by no means unwieldy or too large for this type of MDL. In fact, a sixteen lawyer appointment is average for a products liability MDL. In one of the most recently created MDLs involving a medical device, *In re: DePuy Orthopedics, Inc. ASR Hip Implant Products* the court appointed a leadership committee consisting of twenty-one attorneys, with an additional fourteen attorneys making up sub-committees such as discovery, state liaison and science. See MDL 2197, Case Management Order No. 3 attached as exhibit A. Similarly, the court in *In re: Medtronic, Inc. Implant Defibrillators Litigation* appointed fourteen lawyers to the leadership committee, see MDL 1726, Pretrial Order No. 2 attached as exhibit B, and twenty lawyers were appointed in *In re: Medtronic, Inc, Sprint Fidelis Leads Product Liability Litigation*. See MDL 1905, Order No. 3 attached as exhibit C.<sup>1</sup>

Defendants' are not able to cite to any authoritative case law to support their position. Their reliance on *Vincelli v Nat'l Home Health Care Corp.*, 112 F.Supp. 2d 1309 (M.D. Fla.

---

<sup>1</sup> Other MDLs have appointed leadership committees of similar size; *In re: Guidant Corp. Implantable Defibrillators Products Liability Litigation*, MDL 1708, appointment of 23 lawyers; and *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation*, MDL 2151, appointment of 18 lawyers.

2000), is misplaced and does not apply to a products liability MDL. *Vincelli* involved a securities class action case governed by the Private Securities Litigation Reform Act of 1995, 15 U.S.C.S. § 78u-4. The appointment of an executive committee in that case was for a class action suit only; it did not involve hundreds of individual cases as in a products liability MDL. Moreover, the court's reasoning for denying the appointment is not applicable in an MDL. The court reasoned that an executive committee would burden the plaintiff class with additional counsel fees, delay or confusion and that such appointment would make trying the case cumbersome. *Id.* at 1319. PSC appointments in a products liability MDL assist in keeping the litigation moving along at a good pace. It provides more hands on deck to assist with what can often be overwhelming document production, various depositions across the country, and increased expenses associated with discovery over a prolonged period of time.

An MDL is a unique situation and the appointment of a leadership committee is not only for the purpose of providing an efficient streamlined mechanism for representing hundreds of plaintiffs' but also to assist in leveling the playing field so the resolution of the litigation is based on its merits.

**B. The Number of Cases Filed at the Time of Appointment of the Leadership Committee Does not have any Bearing on the Size of the Leadership Committee**

Defendants illogically suggest that there is a correlation between the number of cases filed at the time of the appointment of the PSC and the number of PSC members. If there is to be any consideration to this correlation, the size of the PSC should take into consideration the *eventual* size of the litigation and the potential magnitude of discovery and other pretrial. Otherwise, the court would be forced to continually update and add to the PSC as the litigation grew. Defendants' suggestion to only consider the number of cases filed at the time of the PSC appointment, which is always done in the beginning of an MDL, is naive.

This litigation has the potential to grow to thousands of filed cases. The Defendants sold over 68,000 recalled MIS implants and hundreds of thousands of flex implants. As defendants have acknowledged, there are already 100 cases filed in the MDL, which was appointed just one month ago. Moreover, Plaintiffs' counsel have been retained in hundreds more cases that have not yet been filed.<sup>2</sup>

Defendants refer to the twelve person PSC appointed in *In re: Trasyolol Product Liability Litigation*, which ultimately ended up with close to 2,000 lawsuits. However, when the PSC was appointed in *Trasyolol*, which was May 22, 2008, there were only 63 cases filed in the MDL. See Exhibit A attached to Case Management Order No. 3, MDL 1928 attached as exhibit D. This MDL already has 100 cases and continues to grow with no definitive end date – a sixteen person leadership committee is far from unreasonable.

Another MDL that provides a near identical comparison for this court is *In re: Gadolinium-Based Contrast Agents Products Liability Litigation (Gadolinium)*. At the time of the PSC appointment in *Gadolinium* there were less than 100 cases filed – fewer than in the instant litigation. See *Gadolinium*, MDL 1909, 5/13/2008 Transcript of Teleconference Conference Call at p.3-4 attached as exhibit E. The eventual size of the litigation was anticipated by the parties to be around only 700 cases. *Id.* The court in *Gadolinium* appointed a sixteen member PSC<sup>3</sup> – the same size as the proposed PSC before this Court. See Case Management

---

<sup>2</sup> As routinely seen in other MDLs there are many cases waiting in the wings to be filed after the court enters a direct file order.

<sup>3</sup> Three additional members were appointed as Federal-State Court Liaison Counsel in the *Gadolinium* MDL.

Order No. 2, MDL 1909, attached as exhibit F. As of July 14, 2011, the *Gadolinium* MDL had 691 filed cases according to MDL statistic reports.<sup>4</sup>

This MDL already has 100 filed cases pending and may potentially grow to thousands of cases over time. Historically, MDLs of this magnitude have appointed PSCs of more than sixteen members. The proposed PSC is not only reasonable but is conservative in light of the eventual size of the litigation.

### **C. This Court Should Give Deference to the Plaintiffs' Proposed PSC**

Recognizing that it is the courts obligation to appoint the PSC, it nevertheless seems prudent that some deference be given to the organizational structure suggested by plaintiffs' counsel. In circumstances, such as here, where plaintiffs' counsel have been able to generally organize themselves, the court's role in the appointment of a PSC is hopefully assisted, and perhaps, to some extent, guided by that development. The *Manual for Complex Litigation* recognizes that courts should not overlook the importance of this kind of "private ordering" and it should be encouraged. See *Manual for Complex Litigation (Fourth)* § 10.22 ("In some cases the attorneys coordinate their activities without the court's assistance, and such efforts should be encouraged."). Because it is the product of private ordering, general consideration of the proposed structure promises to avoid the potentially awkward and inefficient leadership that can result from a piecemeal structure cobbled together from competing petitions or slates.

The proposed PSC has been informally working together on this litigation for several months. The group has remained unified and developed a cohesive approach to the litigation.

---

<sup>4</sup> Judge Dan Polster's management of the *Gadolinium* MDL was clearly viewed as effective efficient. Before it has even been concluded, the JPML also assigned Judge Polster MDL 2066, *In re: Oral Sodium Phosphate Solution-Based Product Liability Litigation*.

Thus far, the group has spoken with one voice and displayed unanimity on common benefit issues with no reason to believe that this would change in the future.

Defendants' concerns about not being able to develop "consistent working relationships" when dealing with a sixteen member PSC are unfounded. Defendants' claim that they would have to deal with different counsel on various issues such as the protective order, discovery, depositions, etc., is baseless and unsupported by the facts. Defendants' communication will be and has been with the three co-leads who are supported by the PSC and will act as the spokespersons for the group. There has already been several calls and correspondence with Defense counsel where Plaintiffs have expressed one unified position on several different issues. For defendants to state otherwise is pure speculation without any factual support.

Defendants proposed structure of three co-leads and one liaison counsel with no supporting PSC would place Plaintiffs at an unfair disadvantage from the outset of the litigation. Baker Daniels is an international law firm with more than 370 lawyers and legal professionals at its disposal. For them to suggest that Plaintiffs PSC should be limited to four members is offensive to say the least. Moreover, Defendants cite to no legal authority that allows them to have control over the organization of Plaintiffs' counsel. Likewise, Plaintiffs do not have a say in the number of attorneys and law firms employed to represent and defend Defendants' interests. A four member PSC is wholly inadequate to represent the injured Plaintiffs in this litigation which will undoubtedly produce several millions of pages of documents in document production alone and be very expensive.

#### **D. Conclusion**

Defendants' opposition to Plaintiffs proposed PSC is (1) baseless, (2) relies on assumptions that are not supported legally or factually and (3) is part of Defendant's continued

efforts to prevail in this litigation utilizing their divide and conquer tactics as opposed to relying on the merits of the case. There is no basis under the law or the present facts that support Defendants' position that a sixteen member PSC is too large.

It is in the best interests of the individual plaintiffs and for the effective and efficient management of this MDL, as mandated by the *Manual*, for the court to appoint Plaintiffs' proposed PSC.

Dated: September 9, 2011

Peter Flowers  
Foote Meyers Mielke & Flowers, PC  
3 North 2<sup>nd</sup> Street, Suite 300  
Saint Charles, IL 60174  
Tel. (630) 232-6333  
Email: [pjf@foote-meyers.com](mailto:pjf@foote-meyers.com)

***Proposed Plaintiffs' Liaison Counsel***

Respectfully Submitted,

/s/ James Ronca  
James Ronca, Esq. (SBN 25631)  
ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, PC  
1710 Spruce Street  
Philadelphia, PA 19103  
Tel: (215)735-1130  
Fax: (866)735-2792  
Email: [Jronca@anapolschwartz.com](mailto:Jronca@anapolschwartz.com)

Timothy Becker  
Johnson Becker PLLC  
33 South Sixth Street, Suite 4530  
Minneapolis, MN 55402  
Phone: (612) 333-4662  
Fax: (612) 339-8168  
Email: [tbecker@johnsonbecker.com](mailto:tbecker@johnsonbecker.com)

Tobias Milrood  
Pogust, Braslow and Millrood  
Eight Tower Bridge, Suite 1520  
161 Washington Street  
Conshohocken, PA 19428  
Phone: (610) 941-4204  
Fax: (610) 941-4245  
Email: [tmillrood@pbmattorneys.com](mailto:tmillrood@pbmattorneys.com)

***Proposed Co-Leads for Plaintiffs' Counsel***



## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

IN RE: DePUY ORTHOPAEDICS, INC  
ASR HIP IMPLANT PRODUCTS

MDL Docket No. 1:10 md 2197

This Document Relates To:

**CASE MANAGEMENT ORDER NO. 3**

ALL CASES.

The Court hereby designates the following counsel to act on behalf of the parties  
in the DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation.

**Plaintiffs' Executive Committee**

Ben W. Gordon, Jr. Levin, Papantonio, Thomas, Mitchell, Eishner, Rafferty & Proctor PA  
R. Eric Kennedy, Weisman, Kennedy, Berris  
Ellen Relkin, Weitz & Luxenberg (Co-Lead Counsel)  
Mark P. Robinson, Robinson, Calcagnie & Robinson  
Christopher A. Seeger, Seeger Weiss LLP  
Steven J. Skikos, Skikos, Crawford, Skikos, Joseph & Millican (Co-Lead Counsel)

**Plaintiffs' Steering Committee**

Andres F. Alonso, Parker Waichman Alonso  
Esther Berezofsky, Williams Cuker Berezofsky  
Ed Blizzard, Blizzard, McCarthy & Nabers  
Jane Conroy, Hanley Conroy  
Leonard A. Davis, Herman Herman Katz & Cotlar  
Wendy Fleishman, Lief Cabraser  
Lawrence J. Gornick, Levin, Simes, Kaiser & Gornick

Seth Katz, Burg, Simpson, Eldredge, Hersh & Jardine

Mark Lanier, Lanier Law Firm

Michael London, Douglas & London

Donald A. Migliori, Motley Rice

Peter J. Polos, Panish, Shea & Boyle

Navan Ward, Jr., Beasley Allen

**Plaintiffs' Liasion Counsel**

Michelle L. Kranz, Zoll Kranz & Borgess

**Plaintiffs' State Liasion Counsel**

California: Amy Solomon, Girardi, Keese

New Jersey: Christopher M. Placitella, Cohen Placitella & Roth

**Science Committee**

Steven Baron, Baron & Budd

Annesley DeGaris, Cory Watson

John Restaino, Restaino Law Firm

Ken Seeger, Seeger Salvas

**Discovery Committee**

Thomas R. Anapol, Anapol Schwartz

Richard Arsenault, Neblett Beard & Arsenault

Turner Branch, Branch Law Firm

Philip Bohrer, Bohrer Law Firm

Hezekiah Sistrunk, Jr., Cochran Law Firm

Trent Miracle, Simmons Browder

**Law & Motions Committee**

Timothy J. Becker, Zimmerman Reed

Tara Sutton, Robins Kaplan Miller & Ceresi

Chairs of the Committees will be appointed by the Plaintiff Executive Committee. It is anticipated that further appointments to the existing Plaintiff Committees or the addition of further subcommittees will be approved, as necessary, as the litigation progresses.

**Defendants' Co-Lead Counsel**

Robert C. Tucker, Tucker Ellis & West LLP

Susan M. Sharko, Drinker Biddle & Reath LLP

**Defendants' Liaison Counsel**

Kristen Mayer, Tucker Ellis & West LLP

IT IS SO ORDERED.

S/ David A. Katz  
DAVID A. KATZ  
U. S. DISTRICT JUDGE

## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
MDL No. 05-1726 (JMR/AJB)

In Re: Medtronic, Inc. )  
Implantable Defibrillators ) **PRETRIAL ORDER NO. 2**  
Litigation ) **Designation of Lead**  
 ) **Counsel**  
 )

This matter has come before the Court for designation of Lead Counsel. The Court has received numerous communications in this regard, and is aware of concerns and criticisms raised by counsel for some of the plaintiffs. Having considered these differing views, and being advised in the premises, IT IS HEREBY ORDERED:

**I. Organization and Responsibilities of Plaintiffs' Counsel.**

The Court designates the following counsel to act on behalf of Plaintiffs:

**A. Plaintiffs' Co-Lead Counsel:** The Court designates the following counsel as Plaintiffs' Co-Lead Counsel:

Daniel E. Gustafson  
Gustafson Gluek PLLC  
650 Northstar East  
608 Second Ave S  
Minneapolis, MN 55402  
[dgustafson@gustafsongluek.com](mailto:dgustafson@gustafsongluek.com)  
Phn: (612) 333-8844  
Fax: (612) 339-6622

Charles S. Zimmerman  
Zimmerman Reed, P.L.L.P  
651 Nicollet Mall,  
Suite 501  
Minneapolis, MN 55402  
[csz@zimmreed.com](mailto:csz@zimmreed.com)  
Phn: (612) 342-0400  
Fax: (612) 341-0844

**B. Plaintiffs' Steering Committee.** The following counsel are appointed to serve on Plaintiffs' Steering Committee:

Richard J. Arsenault  
Neblett Beard & Arsenault  
2220 Bonaventure Court  
P.O. Box 1190

Alexandria, LA 71309

Daniel E. Becnel, Jr.  
Law Offices of Daniel E. Becnel, Jr.  
106 West Seventh Street, P.O. Drawer H  
Reserve, LA 70084

Mitchell M. Breit  
Milberg Weiss Bershad & Schulman LLP  
One Pennsylvania Plaza  
New York, NY 10119

Virginia Buchanan  
Levin Papantonio Thomas Mitchell Echsner &  
Proctor, P.A.  
316 South Baylen Street, Suite 600  
Pensacola, FL 32502

Cynthia B. Chapman  
Caddell & Chapman  
1331 Lamar, Suite 1070  
Houston, TX 77010

Dianne M. Nast  
RodaNast, P.C.  
801 Estelle Drive  
Lancaster, PA 17601

Christopher A. Seeger  
Seeger Weiss LLP  
One William Street  
New York, NY 10004

Hunter J. Shkolnik  
Rheingold, Valet, Rheingold, Shkolnik & McCartney  
LLP  
113 E. 37<sup>th</sup> Street  
New York, NY 10016

Bernie Smalley  
Anapol Schwartz Weiss Cohan Feldman & Smalley  
1900 Delancey Place  
Philadelphia, PA 19103

Thomas M. Sobol  
Hagens Berman Sobol Shapiro  
One Main Street  
4<sup>th</sup> Floor  
Cambridge, MA 02142

Teresa Toriseva  
Hill Toriseva & Williams, PLLC  
89 Twelfth St.  
Wheeling, WV 26003

The Court understands that a number of the members of the Plaintiffs' Steering Committee are among those who have not traditionally been appointed to such a task. The Court advises counsel that it expects these members will bear the full share of their responsibility to their respective clients and to the Court, and that they will serve their clients and the Court in the spirit set forth at the initial pretrial conference.

**C. Plaintiffs' Liaison Counsel.** The Court designates the following counsel to serve as Plaintiffs' Liaison Counsel:

Richard A. Lockridge  
Lockridge Grindal Nauen, PLLP  
100 Washington Avenue South  
Suite 2200  
Minneapolis, MN 55401  
Phn: (612) 339-6900  
Fax: (612) 339-0981

**II. Organization of Defendants' Counsel.** The Court designates the following counsel to act on behalf of Defendants:

**A. Defendants' Co-Lead Counsel:** The Court designates the following counsel as Defendants' Co-Lead Counsel:

Lori G. Cohen  
Greenberg Traurig, LLP  
The Forum - Suite 400  
3290 Northside Parkway  
Atlanta, GA 30327  
Phn: (678) 553-2100  
Fax: (678) 553-2212

Stephen J. Immelt  
Hogan & Hartson, LLP  
111 South Calvert Street



Baltimore, MD 21202  
Phn. (410) 659-2700  
Fax (410) 539-3981

**B. Defendants' Liaison Counsel.** The Court designates the following counsel to serve as Defendants' Liaison Counsel:

Donald M. Lewis  
Halleland Lewis Nilan & Johnson, P.A.  
600 U.S. Bank Plaza South  
220 South Sixth Street  
Minneapolis, MN 55402-4501  
Phn: (612) 338-1838  
Fax: (612) 338-7858

Dated: January 24, 2006

s/ James M. Rosenbaum  
JAMES M. ROSENBAUM  
United States Chief District Judge

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re:  
MEDTRONIC, INC.  
SPRINT FIDELIS LEADS  
PRODUCT LIABILITY LITIGATION

MDL NO. 08-1905 (RHK/JSM)

ORDER NO. 3

THIS DOCUMENT RELATES TO:  
ALL CASES

The above matter came on before the undersigned on May 28, 2008 regarding the designation of Plaintiffs' Lead Counsel, Plaintiffs' Steering Committee, and Liaison Counsel.

The Court, being duly advised in the premises, upon all of the files, records and proceedings herein, now makes and enters the following Order.

IT IS HEREBY ORDERED:

1. To act on behalf of plaintiffs, the Court hereby designates the following as lead counsel:

Daniel E. Gustafson, Esq.  
Gustafson Gluek PLLC  
725 Northstar East  
608 Second Avenue South  
Minneapolis, MN 55402  
(612) 333-8844

Plaintiffs' lead counsel shall be a member of and direct the work of the Plaintiffs' Steering Committee. In this regard, plaintiffs' lead counsel shall be responsible for coordinating the activities of plaintiffs during pretrial proceedings and in consultation and with the assistance of Plaintiff's Steering Committee, shall:

A. Determine and present (after consultation with other members of Plaintiffs' Steering Committee), briefs, oral argument, or such other fashion as may be

appropriate, personally or by a designee, to the Court and opposing parties the position of the plaintiffs on all matters arising during pretrial proceedings;

B. Coordinate the initiation and conduct of discovery on behalf of plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure relating to discovery or any other subsequent Order of this Court;

C. Conduct settlement negotiations on behalf of plaintiffs, but not enter binding agreements except to the extent expressly authorized;

D. Delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the plaintiffs is conducted effectively, efficiently and economically;

E. Enter into stipulations with opposing counsel as necessary for the conduct of the litigation;

F. Prepare and distribute to the parties periodic status reports;

G. Maintain adequate time and disbursement records covering services of designated counsel and establish guidelines for approval by the Court as to the keeping of time records and expenses;

H. Monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;

I. Perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further Order of the Court; and

J. Submit, if appropriate, additional committees and counsel for designation by the Court.

2. To act on behalf of plaintiffs, the Court hereby designates the following as  
Liaison Counsel:

Robert K. Shelquist, Esq.  
Lockridge Grindal Nauen PLLP  
100 Washington Avenue South  
Suite 2200  
Minneapolis, MN 55401  
(612) 339-6900

Plaintiffs' liaison counsel shall:

A. Maintain and distribute to all other plaintiffs' counsel and to  
defendants' counsel an up-to-date service list;

B. On behalf of all counsel for all plaintiffs, receive from defendants,  
the Court, and third parties, and as appropriate, distribute to all other plaintiffs' counsel  
the following: written and electronic communications from the Court, defendants and  
third parties; pleadings; Orders from the Court; and discovery and documents from  
defendants and third parties.

C. Maintain and make available to all other plaintiffs' counsel at  
reasonable hours a complete file of all documents served by or upon each party, and  
establish and maintain an electronically accessible document depository.

3. To act on behalf of plaintiffs, the Court hereby designates the following as  
the Plaintiffs' Steering Committee:

Chair of Plaintiffs' Steering Committee  
Charles S. Zimmerman, Esq.,  
Zimmerman Reed PLLP  
651 Nicollet Mall, Suite 501  
Minneapolis, MN 55402  
(612) 341-0400

Richard J. Arsenault, Esq.  
Neblett, Beard & Arsenault  
2220 Bonaventure Court  
P. O. Box 1190  
Alexandria, LA 71309-1190  
(800) 256-1050

C. Brooks Cutter, Esq.  
Kershaw, Cutter & Ratinoff, LLP  
980 Ninth Street  
19th Floor  
Sacramento, CA 95814  
(916) 448-9800

Jim Doyle, Esq.  
Williams, Kherkher, Hart & Boundas LLP  
8441 Gulf Freeway  
Suite 600  
Houston, TX 77017  
(713) 230-2200

R. Jackson Drake, Esq.  
Whatley Drake & Kallas  
1000 Park Place Tower  
2001 Park Place North  
Birmingham, AL 35202  
(205) 328-9576

Nicholas J. Drakulich, Esq.  
The Drakulich Firm  
2727 Camino Del Rio South  
Suite 322  
San Diego, CA 92108  
(858) 755-5887

Wendy R. Fleishman, Esq.  
Lief, Cabraser, Heimann & Bernstein, LLP  
780 Third Avenue  
48th Floor  
New York, NY 10017  
(212) 355-9500

Michael K. Johnson, Esq.  
Goldenberg & Johnson, PLLC  
33 South Sixth Street  
Suite 4530  
Minneapolis, MN 55402  
(612) 333-4662

Dianne M. Nast, Esq.  
Roda Nast, P.C.  
801 Estelle Drive  
Lancaster, PA 17601  
(717) 892-3000

Tina B. Nieves, Esq.  
Gancedo & Nieves LLP  
418 North Fair Oaks Avenue  
Suite 202  
Pasadena, CA 91103  
(626) 685-9800

Neil D. Overholtz, Esq.  
Aylstock, Witkin, Kreis & Overholtz  
803 North Palafox Street  
Pensacola, FL 32501  
(850) 916-7450

Eric M. Quetglas-Jordan, Esq.  
Quetglas Law Offices  
P. O. Box 16606  
San Juan, PR 00908  
(787) 722-0635

Mark P. Robinson, Jr., Esq.  
Robinson, Calcagnie & Robinson  
620 Newport Center Drive  
Seventh Floor  
Newport Beach, CA 92660  
(949) 720-1288

Camilo K. Salas, III, Esq.  
Salas & Co., L.C.  
650 Poydras Street  
Suite 1660  
New Orleans, LA 70130  
(504) 799-3080

Hunter J. Shkolnik, Esq.  
Rheingold, Valet, Rheingold, Shkolnik & McCartney LLP  
113 East 37th Street  
New York, NY 10016  
(212) 684-1880

Marcus L. Stevenson, Esq.  
Sanford, Stevenson Riff LLP  
2016 Bissonnet Street  
Houston, TX 77005  
(800) 240-2460

Fred Thompson, III, Esq.  
Motley Rice LLC  
28 Bridgeside Boulevard  
P. O. Box 1792  
Mt. Pleasant, SC 29464  
(843) 216-9000

Teresa Toriseva, Esq.  
Wexler, Toriseva Wallace LLP  
1446 National Road  
Wheeling, WV 26003  
(304) 238-0066

Leila H. Watson, Esq.  
Corey, Watson, Crowder & DeGaris, P.C.  
2131 Magnolia Avenue  
Birmingham, AL 35205  
(205) 328-2200

4. To act on behalf of defendants, the Court hereby designates the following  
as Liaison Counsel for defendants:

George W. Soule, Esq.  
Jennifer K. Huelskoetter, Esq.  
Melissa R. Stull, Esq.  
Bowman & Brooke LLP  
150 South Fifth Street  
Suite 3000  
Minneapolis, MN 55402  
(612) 339-8682

Defendants' liaison counsel shall

A. Maintain and distribute to all other plaintiffs' counsel and to  
defendants' counsel an up-to-date service list;

B. On behalf of all counsel for all defendants, receive from plaintiffs,  
the Court and third parties, and as appropriate, distribute to all other defendants'



counsel the following: written and electronic communications from the Court, plaintiffs and third parties; pleadings; Orders from the Court; and discovery and documents from plaintiffs and third parties.

Dated: May 30, 2008

*s/ Richard H. Kyle*  
RICHARD H. KYLE  
United States District Judge

*s/ Janie S. Mayeron*  
JANIE S. MAYERON  
United States Magistrate Judge

## **EXHIBIT D**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 1:08-MD-01928-MIDDLEBROOKS/JOHNSON**

IN RE TRASYLOL PRODUCTS LIABILITY  
LITIGATION – MDL-1928

This Document Relates to All Actions

**PRETRIAL ORDER NO. 7 RELATING TO CASE-SPECIFIC  
DISCOVERY AND PRETRIAL MOTIONS IN ACTIONS NOT  
SELECTED FOR INITIAL TRIAL POOL**

**CASE MANAGEMENT ORDER NUMBER 3 (“CMO NO. 3”)**

The purpose of this Order is to provide further for the sequencing of case-specific discovery and pretrial motions in the Trasyolol Products Liability personal injury actions that have been filed in, transferred to, or are in the process of being transferred to this Court (i.e., a notice of tag along has been served). Except as otherwise provided herein, this Order applies to all Parties as defined in Pretrial Order No. 4 (“PTO No. 4”).

**I. GROUPS OF ACTIONS NOT SELECTED FOR INITIAL TRIAL POOL.**

Exhibit A hereto, which is made a part of this Order, is a list of all Trasyolol Products Liability personal injury actions filed on or before July 15, 2008.<sup>1</sup> The cases identified in Exhibit A that are not selected for inclusion in the Initial Trial Pool pursuant to separate Order of this Court shall be assigned to groups, in sequence by date of initial filing, for purposes of the case-specific expert discovery and pretrial motions schedule. Actions filed on the same date shall be assigned in sequence alphabetically by last name of the first named plaintiff.

---

<sup>1</sup> This Order does not apply to any putative class actions or any cases not alleging personal injuries.

The actions shall be assigned as follows: Group 1 shall consist of the first six actions. Group 2 shall consist of the next six actions. Group 3 shall consist of the next six actions. Group 4 shall consist of all remaining actions filed on or before July 15, 2008.

If an action initially included in Groups 1 through 3 is later either selected for inclusion in the Initial Trial Pool, transferred, dismissed, or otherwise resolved or disposed of, on or before July 15, 2009, the remaining actions shall be re-allocated among these groups in accordance with this Section.

Group 5 shall consist of all actions filed after July 15, 2008. If additional actions are filed in or transferred to this Court such that completion of discovery in Group 5 becomes unmanageable, the parties may seek a further order from this Court adding additional groups to provide for the prompt disposition of those actions.

## **II. CASE-SPECIFIC DISCOVERY AND PRETRIAL MOTIONS SCHEDULE.**

Case-specific discovery and pretrial motions for the personal injury actions shall proceed according to the schedule set forth in Exhibit B to this Order.<sup>2</sup> In addition, Section XI.A of Pretrial Order No. 4 (setting forth the date for completion of fact discovery for actions filed on or before July 15, 2008), is modified as follows:

For actions filed on or before July 15, 2008, and not selected for inclusion in the Initial Trial Pool, the parties shall complete case-specific fact discovery by July 15, 2009, except that, absent agreement of the parties or upon good cause shown, case-specific depositions of fact witnesses shall be limited to one witness from each of the following categories for each patient who allegedly received Trasyolol:

- (1) the patient or the patient's representative; and

---

<sup>2</sup> Any date in the schedule falling on a weekend or court holiday shall be adjusted to the next business day.

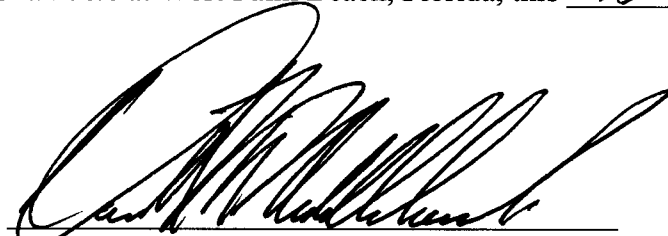
- (2) the patient's primary care physician prior to the time the patient allegedly was administered Trasylol; and
- (3) the patient's cardiologist; and
- (4) the patient's surgeon for the procedure in which Trasylol allegedly was administered; and
- (5) the doctor or other health care professional who allegedly prescribed Trasylol for the patient; and
- (6) the doctor or other health care professional who treated the patient for any alleged Trasylol-related injury.

If the identity of any physician or health care professional described in the foregoing sentence is not specified in the Plaintiff Fact Sheet, the Plaintiff shall promptly identify them upon request from Defendants. Additional depositions of case-specific fact witnesses related to a particular patient (for example, of multiple representative plaintiffs, or of any additional surgeon who performed a "take back" cardiac surgery following the surgery in which Trasylol was administered) may be taken prior to July 15, 2009, upon agreement of the parties or by Court order for good cause shown. Production of documents described in Section VIII.C(9) of Pretrial Order No. 4 (pertaining to sales representatives), disclosures of case-specific fact witnesses, depositions of case-specific fact witnesses not deposed prior to July 15, 2009, case-specific expert discovery, and pretrial motions for the personal injury actions shall proceed according to the schedule set forth in Exhibit B, which is made a part of this Order. If any case-specific fact witness described in categories (1) through (6) above is not deposed before July 15, 2009, such witness may be deposed during the time for completion of fact witnesses set forth in the schedule in Exhibit B.

For actions filed after July 15, 2008, Section XI.A of Pretrial Order No. 4 setting forth the date for completion of case-specific fact discovery for actions filed after July 15, 2008, is modified as follows: The case-specific fact discovery described above relating to categories (1)

through (6) of this Section shall be completed within twelve (12) months after the date of initial service of the complaint. Discovery in actions filed after July 15, 2008, otherwise shall proceed in accordance with Pretrial Order No. 4 and this Order, including Exhibit B herein, until further order of the Court.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 16 day of September, 2008.

A handwritten signature in black ink, appearing to read 'Donald M. Middlebrooks', is written over a horizontal line.

DONALD M. MIDDLEBROOKS  
UNITED STATES DISTRICT JUDGE

# EXHIBIT “A”

	<b><u>(LEAD) PLAINTIFF</u></b>	<b><u>DATE FILED</u></b>	<b><u>TRANSFEROR COURT</u></b>	<b><u>MDL NO.</u></b>
1	Morrill, Melissa	Dec. 29, 2006	M.D. Florida	08-80424
2	Davis, Linda	Jan. 25, 2007	M.D. Tennessee	08-80651
3	Williams, Ada	Jan. 25, 2007	M.D. Tennessee	08-80650
4	Bakan, Deborah	Feb. 2, 2007	M.D. Florida	08-80423
5	O'Connor, Michael	Apr. 9, 2007	S.D. California	08-80435
6	Sessums, Jonnie	May 16, 2007	S.D. Mississippi	08-80388
7	De Leon, Lupe	May 17, 2007	N.D. California	08-80395
8	Storer, Elena	May 17, 2007	N.D. California	08-80394
9	Lanham, Kenneth	May 21, 2007	S.D. Texas	08-80397
10	Fast, Crystal	May 23, 2007	N.D. West Virginia	08-80613
11	Wease, David	June 15, 2007	N.D. Georgia	08-80387
12	Pesl, Vance	Sept. 5, 2007	S.D. Texas	08-80393
13	Reider, Evelyn	Sept. 12, 2007	W.D. Louisiana	08-80444
14	Ware, Sheila	Oct. 5, 2007	C.D. California	08-80428
15	Shaw, Sherry	Dec. 1, 2007	M.D. Georgia	08-80386
16	Durkin, Thomas	Dec. 6, 2007	N.D. Illinois	08-80419
*	Rodriguez, Ismael	Dec. 10, 2007	S.D. Florida	07-81172
17	Burnette, Bobbie	Dec. 12, 2007	N.D. Alabama	08-80697
18	Collins, Jeanne	Dec. 31, 2007	N.D. California	08-80605
19	Step toe, Jerlene	Jan. 14, 2008	S.D. Georgia	08-80608
20	Caruso, Roseann	Jan. 17, 2008	D. Connecticut	08-80639
21	Eannarino, Matthew	Jan. 17, 2008	D. Connecticut	08-80640
22	Mittelman, Melva	Jan. 22, 2008	N.D. Georgia	08-80594
23	Baker, Marilise	Jan. 24, 2008	N.D. Georgia	08-80595
24	Reedy, Helen	Jan. 24, 2008	N.D. Georgia	08-80588
25	Monahan, David	Jan. 25, 2008	D. Connecticut	08-80641



26	Booterbaugh, Jodi	Jan. 28, 2008	S.D. Ohio	08-80552
27	Minard, Carol	Jan. 31, 2008	N.D. California	08-80587
28	Holman, Delores	Feb. 19, 2008	S.D. Ohio	08-80575
29	Kahr, Ruth	Feb. 19, 2008	S.D. Ohio	08-80551
30	Wash, Derek	Mar. 11, 2008	M.D. Georgia	08-80607
31	Walker, Clarence	Mar. 14, 2008	D. Connecticut	08-80642
32	Davis, Emma (NJ)	Mar. 20, 2008	D. New Jersey	08-80623
*	Recalde, Enrique	Mar. 31, 2008	C.D. California	
*	Saine, Jerry	Apr. 11, 2008	E.D. North Carolina	08-80763
33	Bryant, Anna	Apr. 16, 2008	D. Connecticut	
34	Cook, Alta M.	Apr. 16, 2008	D. Connecticut	08-80710
35	Perales, Maricela	Apr. 16, 2008	W.D. Missouri	08-80687
36	Boxrud, Sandra	Apr. 17, 2008	S.D. Florida	08-80404
37	Clark, Karla	Apr. 17, 2008	S.D. Florida	08-80399
38	Gallipeau, Shawn	Apr. 17, 2008	S.D. Florida	08-80400
39	McLendon, Kathy	Apr. 17, 2008	S.D. Florida	08-80402
40	Nakis, Genevieve	Apr. 17, 2008	S.D. Florida	08-80405
*	Roberts, Nina	Apr. 17, 2008	S.D. Florida	08-80401
41	Sherman, Judy	Apr. 17, 2008	S.D. Florida	08-80403
42	Moyer, Marcia	Apr. 18, 2008	S.D. Florida	08-80406
43	Watters, James	Apr. 21, 2008	E.D. Missouri	
44	Orapello, Florence	Apr. 22, 2008	N.D. Florida	
45	White, Barbara	Apr. 25, 2008	D. Connecticut	08-80760
46	Carr, Rosalie	May 9, 2008	D. Connecticut	08-80834
47	Summerlin, Melvin	May 12, 2008	S.D. Alabama	
48	Brickman, Patrick	May 13, 2008	N.D. Alabama	08-80771
49	Dodson, George	May 13, 2008	N.D. Alabama	08-80770
50	Mordecai, Linda	May 13, 2008	N.D. Alabama	08-80781

51	Baker, Herman	May 14, 2008	D. South Carolina	
52	Chapman, Richard	May 16, 2008	S.D. Florida	08-80526
53	Moore, Monica	May 16, 2008	S.D. Florida	08-80523
54	Parks, Steve	May 16, 2008	S.D. Florida	08-80524
55	Schlaikowski, James	May 16, 2008	S.D. Florida	08-80522
56	Spanevello, Grace	May 16, 2008	S.D. Florida	08-80525
*	S.E. Laborers Health and Welfare Fund	May 16, 2008	M.D. Tennessee	
57	McLeod, Diane	May 19, 2008	D. Connecticut	
58	Puckett, Conrad	May 22, 2008	W.D. North Carolina	
59	Deitz, Helen	June 4, 2008	D. Connecticut	
60	McKinney, John	June 4, 2008	D. Connecticut	
61	Romero, Edilea	June 16, 2008	D. Utah	
62	Coats, Jimmy	June 18, 2008	N.D. Alabama	
63	McLain, Jimmie Sue	June 18, 2008	N.D. Alabama	
64	Hall, Joyce	June 18, 2008	S.D. Florida	08-80659
65	Eisenhart, Jeffrey	June 23, 2008	D. Connecticut	
66	Consolino, Dominic	June 30, 2008	S.D. Illinois	
67	Stieb, James	June 30, 2008	S.D. Illinois	
68	Rawson, Dan	July 7, 2008	W.D. Missouri	
69	Romain, Charles	July 7, 2008	E.D. Oklahoma	
70	Lewandowski, Katherine	July 11, 2008	S.D. Florida	08-80750
71	Metzger, Gregory	July 11, 2008	S.D. Florida	08-80751
72	Scott, Frances	July 11, 2008	S.D. Florida	08-22003
73	George, Varughese	July 14, 2008	S.D. Florida	08-80762
74	Medlinger, Carol	July 14, 2008	S.D. Florida	08-80761
75	Bechara, Naguib	July 15, 2008	S.D. Florida	08-80776

\* Case-specific expert discovery to be sequenced separately

## EXHIBIT “B”

	<b>Initial Trial Pool</b>	<b>Group 1</b>	<b>Group 2</b>	<b>Group 3</b>	<b>Group 4</b>	<b>Group 5</b>
<b>Plaintiffs serve Rule 26(a)(3)(A)(i) disclosures for all case-specific fact witnesses</b>	May 18, 2009	July 1, 2009	Sept. 1, 2009	Nov. 2, 2009	Mar. 1, 2010	Apr. 1, 2010
<b>Defendants identify case-specific sales representatives and produce documents per Pretrial Order No. 4 § VIII.C(9)</b>	May 25, 2009	July 8, 2009	Sept. 8, 2009	Nov. 9, 2009	Mar. 8, 2010	Apr. 8, 2010
<b>Plaintiffs serve Rule 26(a)(2) reports for case-specific experts and provide reasonable schedule of deposition dates</b>	June 29, 2009	Sept. 1, 2009	Nov. 2, 2009	Dec. 31, 2009	May 3, 2010	June 3, 2010
<b>Depositions of case-specific fact witnesses completed; all case-specific fact discovery closed</b>	July 15, 2009	Sept. 15, 2009	Nov. 16, 2009	Jan. 14, 2010	May 17, 2010	June 17, 2010
<b>Depositions of Plaintiffs' case-specific experts</b>	July 13, 2009 through Aug. 24, 2009	Sept. 15, 2009 through Oct. 27, 2009	Nov. 16, 2009 through Jan. 15, 2010	Jan. 14, 2010 through Feb. 25, 2010	May 17, 2010 through June 28, 2010	June 17, 2010 through July 29, 2010
<b>Defendants' <i>Daubert</i> motions filed and served</b>	Sept. 21, 2009	Nov. 24, 2009	Jan. 25, 2010	Mar. 25, 2010	July 26, 2010	Aug. 26, 2010
<b>Oppositions to Defendants' <i>Daubert</i> motions filed and served</b>	Oct. 19, 2009	Dec. 22, 2009	Feb. 22, 2010	Apr. 22, 2010	Aug. 23, 2010	Sept. 23, 2010
<b>Replies in support of Defendants' <i>Daubert</i> motions filed and served</b>	Nov. 2, 2009	Jan. 5, 2010	Mar. 8, 2010	May 6, 2010	Sept. 6, 2010	Oct. 7, 2010
<b>Defendants serve Rule 26(a)(2) reports for case-specific experts and provide reasonable schedule of deposition dates</b>	Sept. 7, 2009	Nov. 10, 2009	Jan. 11, 2010	Mar. 11, 2010	July 12, 2010	Aug. 12, 2010
<b>Depositions of Defendants' case-specific experts</b>	Sept. 21, 2009 through Nov. 2, 2009	Nov. 24, 2009 through Jan. 15, 2010	Jan. 25, 2010 through Mar. 8, 2010	Mar. 25, 2010 through May 6, 2010	July 26, 2010 through Sept. 6, 2010	Aug. 26, 2010 through Oct. 7, 2010
<b>Dispositive motions and/or Plaintiffs' <i>Daubert</i> motions filed and served on or before</b>	Nov. 13, 2009	Feb. 2, 2010	Apr. 5, 2010	June 3, 2010	Oct. 4, 2010	Nov. 4, 2010
<b>Oppositions to dispositive motions and/or Plaintiffs' <i>Daubert</i> motions filed and served + 28 days, no later than</b>	Dec. 11, 2009	Mar. 2, 2010	May 3, 2010	July 1, 2010	Nov. 1, 2010	Dec. 2, 2010
<b>Replies in support of dispositive motions and/or Plaintiffs' <i>Daubert</i> motions filed and served + 14 days, no later than</b>	Dec. 28, 2009	Mar. 16, 2010	May 17, 2010	July 15, 2010	Nov. 15, 2010	Dec. 16, 2010

## **EXHIBIT E**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: GADOLINIUM BASED .  
CONTRAST AGENTS, . Cleveland, Ohio  
Products Liability Litigation. Case No. 1:08GD500000  
MDL 1909  
3:05 p.m  
May 13, 2008

TRANSCRIPT OF TELEPHONIC CONFERENCE CALL  
BEFORE THE HONORABLE DAN AARON POLSTER  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs' Spangenberg Shibley & Liber  
Liaison Counsel: By: PETER J. BRODHEAD, ESQ.  
-and-  
WILLIAM HAWAL, ESQ.

For the Defendant GE Squire Sanders & Dempsey  
and Defendants' By: CHARNA E. SHERMAN, ESQ.  
Liaison Counsel:

PARTIAL LISTING OF COUNSEL VIA TELEPHONE:

Lopez McHugh  
By: RAMON LOPEZ, ESQ.

Ashcraft & Gerel  
By: CHRIS TISI, ESQ.

HABIB NASRULLAH, ESQ.  
TOM STURCHI, ESQ.  
DEBBIE MOELLER, ESQ.  
TROY RAFFERTY, ESQ.  
PETER BURG, ESQ.

Lead Counsel for DLA Piper  
Defendant GE By: AMY W. SCHULMAN, ESQ.  
HealthCare, Inc.

Lead Counsel for Bartlit Beck Herman Palenchar  
Defendant Bayer: Scott

CAROL D. HILL & ASSOCIATES  
216-687-0005

Page 2

Page 4

## PARTIAL LISTING OF COUNSEL VIA TELEPHONE:

Burg Simpson Eldredge  
Hersh & Jardine  
By: SETH KATZ, ESQ.  
Seeger Weiss  
By: CHRIS SEEGER, ESQ.

Also Present Greg Jolivet, Law Clerk  
in Chambers' Mary Hughes, Law Clerk  
Conference Room:

Court Reporter: Carol D. Hill, RPR, CPE  
Carol D. Hill & Associates  
55 Public Square, #935  
Cleveland, OH 44113

Proceedings recorded by manual stenography;  
transcript produced by computer.

Page 3

Page 5

MS. HUGHES: Judge, I'm going to go ahead  
and find out who's on.

THE COURT: Well, we don't have to go  
over a hundred people. Whoever's on is on.

MR. BRODHEAD: I can make a listing. I'd  
be happy to do that. We'll submit a joint listing.

MS. HUGHES: Afterwards?

MR. BRODHEAD: Yes, or if we'd just ask.

MS. SHERMAN: We can identify who's  
speaking.

THE COURT: Yes. We should definitely  
identify who's speaking, but I don't think we need a  
roll call.

All right. I had a couple of general  
things. In the future, I'm going to need the agenda  
and any filings, motions, letters, whatever, no less  
than three business days in advance of the conference  
or the phone conference, because I got some things in  
as late as this morning, and, quite frankly, I've not  
really been able to assimilate them in the way I'd  
like to. I'm going to make some decisions, but  
they're not as informed as I'd like them to be; and  
that's because of the volume and the lateness. So I  
want that in the future.

Second, there was a reference in one of the

letters -- I think it was defendant's letter -- that  
there will be 700 cases. And I thought when I asked  
this in an earlier conference we did not think it  
would be more than two or 300; so I guess if -- have  
things changed? At the moment we have approximately  
100, 110. They're still coming in.

MR. BRODHEAD: Judge, I -- Peter  
Brodhead, plaintiffs' liaison counsel. I wasn't  
present when that conversation took place, but I see  
that it was in the pleadings. Evidently, there was a  
conversation between one of plaintiffs' counsel and  
one of defendants' counsel at which it was suggested  
that there may be as many as 700 cases. I can't  
address that except to say that if we were to take an  
estimate or try to estimate what is likely to be  
filed both in state and federal cases throughout the  
United States, I would say that is a reasonable  
number, plus or minus.

THE COURT: Okay.

MS. SCHULMAN: Your Honor, this is Amy  
Schulman. That is not a number that the defendants  
subscribe to. That number of 700, is assumed to be  
the number that plaintiffs believe. And defendants  
believe that the number of claims would be far lower  
than that.

THE COURT: However many there are, there  
are. If they keep trickling in the way they're going  
and we get up to 700, it will be years from now; so  
we'll just see what happens.

I certainly read the parties' scientific  
memoranda. I skimmed through the articles. I  
haven't read them all. They were quite informative.  
I have a good sense of what the key issues are.

I was wondering if anyone has any statistics on  
the total number of patients with renal failure who  
have received the GBCA. Does anyone know that  
number? We obviously have some subset that have  
contracted NSF, but does anyone have an idea, how  
many patients with renal failure have received a  
GBCA?

MR. HAWAL: Your Honor, this is Bill  
Hawal -- the best I think anyone can say is that the  
literature estimates that anywhere from five to seven  
percent of patients with acute renal failure or  
severe renal failure who are exposed to GBCA, develop  
NSF. So that would have to be calculated perhaps in  
that way. That's the best way I can answer.

THE COURT: All right. Is that  
literature, you know, sort of acceptable to both  
sides, that says that roughly five to seven percent?

2 (Pages 2 to 5)

CAROL D. HILL & ASSOCIATES  
216-687-0005

Page 6

1 I don't -- I'm sure that is in there. I didn't pick  
2 that up, Bill.

3 MS. SCHULMAN: Your Honor, it is Amy  
4 again. I think the number most people sitting around  
5 the table with me here recall is more in the  
6 neighborhood of two to three percent. But we will  
7 look and ask our scientists and see if we can get you  
8 a precise citation; because, while we recollect that  
9 number, we don't have the precise citation to give  
10 you at the current time.

11 THE COURT: If you can refer me, and if  
12 it's already in one of the articles you've provided,  
13 I'll go right to it.

14 MS. SCHULMAN: Okay.

15 THE COURT: Okay. Well, it looks like --  
16 there were three things on the agenda. The first one  
17 is the product identification. I'll get to that.  
18 Maybe I'll deal with the other two.

19 Protective order, format of production order.  
20 What does that refer to?

21 MR. BRODHEAD? Your Honor, Seth Katz, I  
22 think, is prepared to address that.

23 MR. KATZ: Your Honor, Seth Katz from  
24 Burg Simpson. Since we were last in Cleveland, we  
25 were trying to negotiate both a protective order,

Page 7

1 globally with all five defendants, and also a format  
2 of production order.

3 The format of production order, that has been  
4 finally agreed to. With regard to the protective  
5 order, I think we are probably comfortable in saying  
6 we're close but we're definitely not there yet.  
7 There is at least one issue we'll need to bring to  
8 the Court for resolution. That is the issue of the  
9 plaintiffs' ability to show treating physicians,  
10 doctors, under a protective order. Certain  
11 defendants have opposed that ability. Obviously that  
12 is an important issue for the plaintiffs.

13 And then there are one or two other issues that  
14 I think we're pretty confident we can work out with  
15 some wordsmithing; and we are confident we can kick  
16 those provisions out and negotiate them later and  
17 submitting the rest to the Court.

18 There is one tangential issue, and that  
19 is we haven't received any production since the last  
20 time, the last production before we were last in  
21 Cleveland, and we tried to work out an attorneys'-  
22 eyes-only provision for now, so we can keep the  
23 production coming, and the lawyers can review them.  
24 And we thought we had an agreement but we have not  
25 received any additional productions.

Page 8

1 THE COURT: Well, I guess on this one  
2 issue, I think I'll need submissions from both sides,  
3 and I'll decide it at our next conference, which is  
4 in June.

5 MR. KATZ: Your Honor, this is Seth Katz  
6 again. Is there a way we can get an order in a  
7 shortened time frame? I'd hate that to hold up  
8 production between now and then.

9 THE COURT: File something and I'll  
10 decide it.

11 MR. KATZ: Thank you, your Honor.

12 THE COURT: When did you want to file  
13 something, and as soon as -- I'll take a couple days  
14 and I'll decide it?

15 MR. KATZ: Great. Thank you.

16 THE COURT: I'll put some dates. What do  
17 you all want for timing on that?

18 MR. KATZ: We can probably submit  
19 something by the end of this week or maybe on Monday

20 THE COURT: Why don't we do this: Both  
21 sides can submit something by a week from today, and  
22 I'll decide it.

23 So that's on the 20th.

24 That's on this one issue about showing documents  
25 which are subject to the protective order to

Page 9

1 plaintiffs' treating physicians.

2 Okay. I'll make a point -- I'm in trial next  
3 week, but I will endeavor to make a decision by the  
4 end of next week.

5 MR. KATZ: Thank you, your Honor.

6 THE COURT: All right, then federal-  
7 state cooperation. I had one conversation with the  
8 state judge in New Jersey, and I've been submitting  
9 -- I'm providing him copies of all my orders.

10 Anything anyone wants to report on that?

11 MR. SEEGER: Judge --

12 MS. SCHULMAN: Your Honor --

13 MR. SEEGER: Go ahead, Amy.

14 MS. SCHULMAN: No, you go.

15 MR. SEEGER: Your Honor, Chris Seeger.  
16 How are you?

17 We had a brief conference with Judge Happas  
18 today, just to give her an update on what we're doing  
19 in the MDL and, also, on discovery areas and what  
20 we're trying to negotiate agreements with the  
21 defendants on.

22 Nothing really substantive happened today  
23 other than the report, and she appointed my firm,  
24 Seeger Weiss, as liaison counsel in New Jersey.

25 THE COURT: Okay. How many cases does

3 (Pages 6 to 9)



Page 10

1 she have now?

2 MR. SEEGER: She has 27, and she asked us  
3 for an estimate of what we thought could be filed in  
4 Jersey. I gave her the number of two to 300, only  
5 because taking a census like that is a little  
6 difficult right now, when people are still working on  
7 investigating their cases. But, I think, that is  
8 probably a safe number. I don't see it going much  
9 above that.

10 THE COURT: Is this two to 300, plus the  
11 700 in federal court; so that would be a thousand?

12 MR. KATZ: I don't know where the number  
13 in federal court came from, Judge. Somebody else, I  
14 think sent that to you. I'm not sure I --

15 THE COURT: Is it two to 300 plus the two  
16 to 300 federal ones? So, that is four to 600.

17 MR. KATZ: Yes.

18 THE COURT: I don't think we quantified  
19 which ones could be filed in federal and which ones  
20 with state court. They're all similar cases.

21 MR. KATZ: Right.

22 THE COURT: Okay. Well, I don't know.  
23 I'd stay in touch with the state judge as we proceed  
24 on this, is about all I can say.

25 MR. LOPEZ: Your Honor, this is Ramon

Page 12

1 encourage the state court lawyers in California and  
2 New Jersey to sort of come along in the MDL and allow  
3 things to be scheduled in the MDL and work together  
4 as a group, we just had to be protective of certain  
5 state court rules that they had in those states that  
6 might vary from the federal rules.

7 I think we've done a good job in the past. I'm  
8 sure if we don't do a good job, the defendants will  
9 let you know immediately. But right now I think it's  
10 going very smoothly.

11 THE COURT: The key thing is coordinating  
12 discovery, so you don't have the same witnesses  
13 deposed repeatedly, particularly experts.

14 Presumably each plaintiff has a separate  
15 treating physician, but there is a lot of  
16 duplication; so, I will assume it's going okay. If  
17 there is a problem, I should be alerted. I'll see  
18 what I can do. I can't order a state judge to do  
19 anything, but I'm confident if there are some  
20 problems that are disrupting things, I'll try to work  
21 them out.

22 MR. KATZ: So -- I'm sorry, Judge.

23 THE COURT: So I'm not going to do  
24 anything other than, you know, making sure my orders  
25 get disseminated. If there are issues that come up,

Page 11

1 Lopez from California, with Lopez McHugh. In  
2 addition to New Jersey there are cases filed in  
3 California state court as well, and some of those are  
4 before the JPML on remands back to the state court.  
5 There will probably be somewhere between 20 to 30 or  
6 40 state court cases ultimately filed in California;  
7 and there is probably only around ten right now. And  
8 those have not been put before one judge, at least as  
9 of yet.

10 THE COURT: Well, there is not much I can  
11 do about those cases. They are what they are, so,  
12 anyone -- does anyone have any words of wisdom on  
13 that subject?

14 MR. SEEGER: Judge, it's Chris Seeger  
15 again. I guess I'd like to, because the subject has  
16 become important for various reasons; so just to let  
17 the Court know that many of us working on the  
18 state-federal coordination link. My partner, Dean  
19 Buchanan, who was appointed with Ramon Lopez, and I,  
20 we have done this in several litigations, I think  
21 successfully. Many of us are just coming out of  
22 Vioxx. We put together a program on state-federal  
23 coordination that we think, and I think the judges  
24 would agree, there was very little if any duplication  
25 of effort. And the big thing was, in order to

Page 13

1 someone should get a telephone conference scheduled  
2 and I'll see what we can do.

3 MR. KATZ: On most of the depositions,  
4 Judge, the way we've gotten around any problem, we've  
5 been cross-noticing and providing time for state  
6 court lawyers in certain jurisdictions to ask their  
7 questions.

8 But there are instances, if someone wants to  
9 take a trial presentation deposition -- in New  
10 Jersey, for example, you're entitled to a discovery  
11 deposition. We've been able to work through those  
12 issues. I don't think you'll get many of them.

13 THE COURT: Okay. Good.

14 MS. SHERMAN: We had also hoped to give  
15 you an updated list -- Peter, the last list we gave  
16 you?

17 MR. BRODHEAD: I still have not heard  
18 from one party, so why don't you go ahead and submit  
19 that list.

20 MS. SHERMAN: Just to keep you as up to  
21 date as you can be. It may not be one hundred  
22 percent perfect, but it's close.

23 THE COURT: Recognizing there are  
24 changes, yes. I mean, some case that hasn't been  
25 filed.

4 (Pages 10 to 13)

CAROL D. HILL & ASSOCIATES  
216-687-0005

Page 14

1 MR. BRODHEAD: It makes sense, your  
2 Honor, if we endeavor to submit a joint list at or  
3 about the time of each hearing that the Court has and  
4 --

5 THE COURT: That's a good idea.

6 MR. BRODHEAD: We'll do that.

7 THE COURT: Okay. So, this is a list as  
8 of May 12th, to the best of the parties' knowledge of  
9 the state cases.

10 MR. BRODHEAD: Right. There, through no  
11 fault of the defendants, there has been a limited  
12 input by the plaintiffs on this, so we will  
13 double-check that. If there are any changes, we will  
14 apprise the Court.

15 MS. SHERMAN: This is the best of the  
16 defendants' ability to know. Obviously, you may have  
17 more.

18 THE COURT: Okay. Last is the issue  
19 that the parties submitted their letters on, and I'm  
20 doing my best to be fair to both sides, all sides;  
21 but I want to move this forward. So, in my view this  
22 is the fairest and best way to do it.

23 The plaintiffs are to submit their plaintiff  
24 profile forms on all plaintiffs. If the plaintiff  
25 has established a product I.D. in a given case, then

Page 15

1 the defendant is to submit a defendant profile form  
2 for that case.

3 And I think the parties said that that has  
4 occurred in roughly 77 out of 118.

5 If the plaintiff has not established product  
6 I.D., and that looks like it is about a third of the  
7 cases so far, the plaintiff must serve third-party  
8 discovery first in an effort to establish a product.  
9 And if the third-party discovery does not reveal the  
10 product, then GE and Bayer will provide a fact sheet,  
11 and hopefully that will trigger -- you know, that  
12 will do it.

13 I think that that is the fairest way to do it.  
14 It is sort of -- it isn't what the plaintiffs  
15 suggested. It isn't what the defendants suggested,  
16 but it is sort of a hybrid.

17 There should be an enforcement mechanism for  
18 either side's failure to submit their fact sheet, and  
19 it should be the same. That will make sure that  
20 everyone does what they're supposed to do.

21 I'm not in a position to tell you -- I mean,  
22 what medical conditions the plaintiffs need to  
23 provide information on. I guess first we had a list  
24 of 80 different conditions. Then it was -- the  
25 defendants narrowed it down to 26. And then the

Page 16

1 plaintiffs reduced it to ten or four, or something.  
2 I don't know what they are. I'm not in a position to  
3 decide.

4 If you all can't figure it out, I'll have  
5 to ask for briefs and you'll have to tell me what is  
6 relevant and what is not. But I have to think that  
7 you can agree on what kinds of conditions might  
8 conceivably be relevant. So, if you can't, I'll have  
9 to decide that.

10 I guess I need this from the plaintiffs: Why is  
11 it necessary, at this time, to learn about all the  
12 contacts with sales representatives in each  
13 individual case?

14 MR. BRODHEAD: Judge, Peter Brodhead. I  
15 think Chris Tisi, discovery chair for the PSC, should  
16 address that.

17 THE COURT: All right.

18 MR. TISI: Your Honor, Chris Tisi for the  
19 plaintiffs' steering committee.

20 The reason why that is very important is because  
21 the plaintiffs need to know what kind of information  
22 that was provided to the doctors about the benefits  
23 and risks associated with the drug. Not just doctors  
24 generally, but also doctors involved in a particular  
25 case. We have had circumstances where -- well, let

Page 17

1 me back up for a moment.

2 In the last status conference, your Honor made  
3 it clear in terms of picking cases for trial and  
4 early trial, one of the things to consider is how  
5 representative and how -- how representative a case  
6 would be.

7 We, in order for us to learn that information,  
8 we have to know what kind of information was provided  
9 to the doctors and what the relationship the doctors  
10 have to any of the defendants in the case.

11 And if a doctor was told to use or not use a  
12 GBCA in a certain manner; was told about certain  
13 risks; was not told about certain risks, it might  
14 make a case more or less typical for purposes of  
15 trial selection and purposes of follow-up discovery.

16 One of the main issues the defendants raised is  
17 the learned-mediary defense. That is, the doctors  
18 already knew and they did not need to warn about  
19 certain information. We need to know what  
20 information, just like the defendants need to know  
21 about our medical and our damage information, in  
22 order to make an informed choice about which cases we  
23 can submit for trial selection purposes and for  
24 discovery selection purposes.

25 One of the key issues that we have is that we

5 (Pages 14 to 17)

Page 18

1 should be on the same footing as the defendants in  
 2 terms of evaluating cases. And in our view it is not  
 3 only not fair, it's inappropriate to have defendants  
 4 have a database of communications with doctors at  
 5 their disposal where they can look and see what they  
 6 told doctors, what they did not tell doctors, what  
 7 the doctors told them after about their use of GBCAs  
 8 that would bear upon all these issues, that we not  
 9 have that. And I think that the Court will be  
 10 looking to the plaintiffs and the defendants to  
 11 inform the Court as to which cases are appropriate to  
 12 set for trial, and we can only do that if we have  
 13 the same information at our disposal.

14 MR. ISMAIL: Your Honor, this is Terrik  
 15 Ismail.

16 THE REPORTER: I'm sorry. I can't hear  
 17 him.

18 MR. ISMAIL: Can you hear me okay, your  
 19 Honor?

20 THE COURT: Yes. Who's speaking?

21 MR. BRODHEAD: Terrik Ismail.

22 MR. ISMAIL: Terrik Ismail, on behalf of  
 23 Bayer defendants.

24 THE COURT: Okay.

25 MR. ISMAIL: With respect to Mr. Tisi's

Page 19

1 comments, I understand your Honor wants to have some  
 2 form of defendants' fact sheets which is case  
 3 specific, on discovery which proceeds after the  
 4 product I.D. issue, but the question Mr. Tisi raises  
 5 is one of -- putting it in the context of needing  
 6 information for trial selection.

7 There is some information we can provide that  
 8 would be pertinent to that information, such as "Dear  
 9 Doctor" letters that went from the manufacturers to  
 10 the physician or other written communication, medical  
 11 communications. I know the plaintiffs have raised  
 12 the question of whether doctors have been retained as  
 13 speakers on behalf of the manufacturing defendants,  
 14 but what Mr. Tisi described was a much broader  
 15 production of documents of sales reps' materials that  
 16 is not -- would pose an undue burden on the  
 17 defendants to do so in every single case. There are  
 18 multiple sales reps' interactions with the  
 19 physicians. But I think what the plaintiffs are  
 20 looking for is not information on the typical case  
 21 but information on the atypical case. They're mining  
 22 for information or fishing for information, looking  
 23 for whatever contact they want to allege to be  
 24 suspicious between sales reps and physicians. That  
 25 is not going to help them identify a representative

Page 20

1 case. That is going to help them identify cases that  
 2 they think are more favorable to them.

3 So, the question of putting the parties  
 4 on equal footing is one that we can address through,  
 5 in some cases, exchange of information. But looking  
 6 for full document production of sales reps' materials  
 7 at this stage is certainly premature, and really, in  
 8 some respects, frustrates the purpose of the MDL,  
 9 where we're trying to get coordinated discovery; and  
 10 to proceed with the full-blown case specific  
 11 discovery on every case is acting as if we don't have  
 12 a coordinating proceeding, your Honor.

13 MS. SCHULMAN: Your Honor, if I may --

14 THE COURT: I think I've heard enough.

15 All right. I mean, the defendants have to  
 16 produce any wide-spread or mass mailings or  
 17 communications they made to physicians or the medical  
 18 community about their product; and they certainly  
 19 have to provide any information that reflects any  
 20 financial arrangements, consulting, financial,  
 21 whatever they had with any, I guess, any of  
 22 plaintiffs' treating doctors, treating physicians.  
 23 That's for sure.

24 At this point I'm not going direct them to  
 25 search and find out every little sales call and what

Page 21

1 any sales rep might have made, might have said. Down  
 2 the road, that may be relevant.

3 MR. TISI: Your Honor, may I ask for a  
 4 point of clarification? At least in our experience,  
 5 in most of these cases, the defendants kept a  
 6 database of calls that they make to doctors,  
 7 indicating what kind of information, pro and con, not  
 8 only about their drugs but about reasonable  
 9 alternatives are in there, but it's not typically --  
 10 I don't want to leave the Court with the impression  
 11 that defendants typically have to mine through piles  
 12 and piles of documents. Typically the stuff is  
 13 contained in a sales database, tracked by the  
 14 company. It is not nearly as burdensome as what has  
 15 been proposed here.

16 I would point out, in many of the cases, in the  
 17 Vioxx case, for example, there were about 20,000  
 18 cases. Here there are, depending upon the count, two  
 19 to 700 cases divided among five different defendants.  
 20 It seems to me, at the very least, if this stuff is  
 21 contained in a database, that we should be provided  
 22 with, and it is easily produceable, and we should  
 23 know that there is such a database; and secondly, to  
 24 make a determination as to how burdensome it really  
 25 is.

6 (Pages 18 to 21)

CAROL D. HILL & ASSOCIATES  
 216-687-0005

Page 22

1 THE COURT: Find out if there is a common  
2 database that each company has of that; so it will be  
3 readily retrievable, I'd like to know. Then we'll  
4 figure out what to do.

5 MS. SCHULMAN: Your Honor, this is Amy  
6 Schulman.

7 I think what I wanted to say before was  
8 that from our perspective, one of the things we have  
9 focused on here was certain threshold issues; and it  
10 seems that what we wanted to explain is that all of  
11 this specific discovery, it is viewed in the context  
12 of millions of pages of non-case specific discovery  
13 that the defendants are already producing, and the  
14 burden that we're put under with respect to document  
15 production --

16 THE COURT: Well, Amy, I'm mindful of  
17 that. If there is a database there, then it's not  
18 going to be too hard to say, "Okay, we have a  
19 database that shows any contact we made with Dr.  
20 Smith by Bayer." So if that's the case, it will be  
21 easy to pull it out. If it's not, I'm not likely to  
22 order it; so, why don't you advise the Court if there  
23 is such a database.

24 And there was some reference in these papers  
25 that the plaintiffs had questions about MRI

Page 23

1 equipment, and I don't see how the MRI equipment is  
2 an issue in this case, so at this point I'm not going  
3 to order any production on that. If someone can show  
4 specifically how it might be relevant down the road  
5 to produce, we can take it up.

6 MR. HAWAL: Your Honor, Bill Hawal again.  
7 Just to address that issue for the Court, I have been  
8 going through certain custodial files for the GE  
9 Health Care production. And, in fact, there is  
10 evidence that they have been bundling their product  
11 in terms of marketing both their GBCAs and their  
12 scanners together, and that's why we believe that is  
13 relevant in terms of using that as, I guess, one way  
14 of describing as a course of effort of getting  
15 OmniScan to be used together with their individual  
16 scanners that are either sold or updated. And so  
17 that is the basis upon which we believe there is  
18 relevance.

19 THE COURT: Well, I fail to see at this  
20 point, Bill, how that's -- if they're doing it,  
21 they're doing it. The issue we're focusing on the  
22 contrast agents, so, they may be tying the two  
23 together. Maybe that is an antitrust problem, but I  
24 don't see that is an important issue here.

25 MR. TISI: Your Honor, this is Chris Tisi

Page 24

1 again. If I could explain why that would be relevant  
2 to the GBCA issue --

3 MS. SCHULMAN: Can I just --

4 THE COURT: There has not been enough  
5 submitted. At this point I don't think it is  
6 relevant. If you can make a showing down the road,  
7 maybe so.

8 MR. TISI: Okay.

9 THE COURT: That's the problem of my  
10 getting this stuff sort of on the fly. It's not in  
11 the way I can make the kind of informed decision I'd  
12 like to make. So, if I have to call it like a  
13 90-mile fast ball, I will do so; and I haven't seen  
14 the relevance.

15 All right. I think those are the decisions I'm  
16 able to make at this point in time

17 MR. TISI: Your Honor, just one other  
18 point. You mentioned some things that the defendants  
19 have to provide on the fact sheet. We'll take all of  
20 those into consideration. One of the things reported  
21 to us, and I just wanted to make the Court aware,  
22 particularly in a disease like this, it is often the  
23 case that plaintiff's treating doctors will contact  
24 the defendant to report an adverse event of the  
25 particular plaintiff in a particular case. And in

Page 25

1 the context of those communications, they will  
2 provide medical information, will provide opinions,  
3 will ask questions; and one of the things that we  
4 think we'll be entitled to in evaluating our case is  
5 any information that the defendant has in their  
6 possession relating to the specific plaintiffs in the  
7 case. I assume that the Court would want them to  
8 turn that over as well, if they have it.

9 MR. ISMAIL: I don't think we'll have a  
10 problem agreeing to that.

11 THE COURT: What specifically is that?  
12 I didn't quite follow it.

13 MR. TISI: In many cases, your Honor, a  
14 doctor who is diagnosing a plaintiff with NSF, and  
15 knows of the connection between NSF and contrast  
16 agents will call the company and make a report of an  
17 adverse event, and the context of that will provide  
18 information, not only written information but verbal  
19 information, will be back and forth between the  
20 company and the doctor about the plaintiff and about  
21 many various issues in the case. And we think we  
22 should be entitled to that kind of information, as  
23 part of --

24 THE COURT: That I think is covered in  
25 what I said before; written or oral communication

7 (Pages 22 to 25)

Page 26

1 from the company to a specific doctor about the drug,  
2 or from the doctor back to the company about a  
3 specific patient. That's what we're talking about;  
4 communication between Dr. Smith and Bayer, about  
5 patient Jones and his or her condition. That should  
6 be produced.

7 MR. TISI: Thank you very much, your  
8 Honor.

9 THE COURT: All right.

10 MR. ISMAIL: Your Honor, there was one  
11 other issue that the defendants wanted to raise in  
12 the context of product identification. This is  
13 Terrik Ismail on behalf of Bayer. One of the  
14 concerns we had, your Honor, with respect to product  
15 identification is twofold. One, obviously those  
16 cases in which the plaintiffs named all manufacturers  
17 without any regard to specificity of which product  
18 was used. And we heard your guidance on that issue.

19 It is also our experience, because of the  
20 generic nomenclature with which these products have  
21 been referenced, that there have been mistakes in  
22 plaintiffs who have pled a specific agent or  
23 defendant in the complaint, but when we get further  
24 down the line we realize that, in fact, it was a  
25 different agent altogether that was named. And so as

Page 27

1 one of the provisos to your comment about product  
2 I.D., even in those situations where a particular  
3 product is alleged to have been used, if the  
4 plaintiffs can provide the defendants with the basis  
5 upon which that product I.D. is made in the  
6 complaint, we don't have to go months down the line  
7 in case-specific discovery, only to discover that the  
8 wrong defendant has been participating in the case.

9 So, if the specific product allegations in the  
10 complaint are made on the basis of medical records or  
11 documentation, it should be a relatively easy trigger  
12 for the plaintiffs to provide that, so we don't waste  
13 time.

14 MR. TISI: Your Honor, this is Chris Tisi  
15 again. As part of the plaintiffs' fact sheet, we  
16 have provided them with all information on product  
17 I.D. that we have in our possession. I don't think  
18 there's any dispute about that.

19 THE COURT: That should be --

20 MR. TISI: And we certainly are willing  
21 to do that.

22 Obviously, in those cases where the defendants  
23 have to provide a fact sheet, if they are aware they  
24 have, indeed, provided their product to the  
25 institution where the plaintiff received their GBCA,

Page 28

1 they should be as forthcoming as well; so that we  
2 have removed that issue from the case.

3 MR. ISMAIL: But the point is that the  
4 defendants aren't doing case-specific discovery in  
5 cases in which they are not properly named. So I am  
6 stating what you said correctly, that the plaintiff's  
7 fact sheet will have that appropriate product I.D. --

8 MR. TISI: Yes.

9 MR. ISMAIL: -- with materials, that  
10 would be the trigger for case-specific information  
11 from us? Then I don't think we need --

12 THE COURT: I think it should be in the  
13 fact sheet.

14 MR. TISI: It is, your Honor.

15 THE COURT: The basis. Okay.

16 MR. ISMAIL: Then we're fine then.

17 THE COURT: All right. Well, unless  
18 anyone else has anything critical, I think we have  
19 covered it.

20 MR. TISI: When can we have information  
21 about the various sales databases from the  
22 defendants, so we can finalize our proposal on the  
23 fact sheets? Is there a time frame we can get that  
24 information?

25 THE COURT: I guess when can each of the

Page 29

1 -- we have four or five defendants. When can they  
2 advise everyone if they have a database? Ten days?

3 MS. SCHULMAN: Your Honor, I thought what  
4 you wanted was for us to do was sort out whether we  
5 had some, and then we would look at it and reassess  
6 the issue, the complexity and given -- you know, at  
7 least --

8 THE COURT: Well, if you don't have a  
9 database, I'm not going to order it produced now, so  
10 that takes care of it.

11 MS. SCHULMAN: And if we -- assume we did  
12 do it, I think there is still a discussion to be had  
13 about the issue of the requirement of producing it,  
14 in light of, at least, our view; that as Bayer's  
15 counsel states, this is in part an effort to find  
16 extraneous documents related to sales reps and not  
17 actually focus on the court issues that are in this  
18 litigation.

19 THE COURT: I'm inclined to order it  
20 produced, if there is a database. I've already said  
21 if there is not, I'm not going to order it produced,  
22 at this point.

23 Why don't you, within ten days, advise  
24 everyone if there are databases.

25 MR. TISI: Thanks, your Honor, I

8 (Pages 26 to 29)

CAROL D. HILL & ASSOCIATES  
216-687-0005

Page 30

1 appreciate it.

2 THE COURT: Okay.

3 MS. HUGHES: It appears to me right now  
4 we have two different proposed case management  
5 orders. They're very different. It appears what the  
6 Judge has decided to do was follow basically the  
7 plaintiffs' case management order with some changes  
8 to it; but should we expect the parties to come up  
9 with a joint proposed case management order at this  
10 point?

11 MS. SCHULMAN: Yes.

12 THE COURT: Yes. I have given some  
13 instructions and guidance; and I will expect  
14 something should be submitted, and I'll issue it.

15 MR. TISI: Thank you, your Honor. We  
16 will work toward that end, now that we have your  
17 guidance --

18 THE COURT: Okay. Well, thank you  
19 everyone; and I guess our next meeting is --

20 MR. BRODHEAD: June 4th, your Honor.

21 THE COURT: Right. Thank you, Peter. At  
22 9:00 a.m. On Wednesday, June 4th at 9:00 a.m

23 MS. HUGHES: And 9:30 for all the  
24 attorneys.

25 MR. TISI: Thank you, your Honor --

Page 31

1 THE COURT: Okay.

2 MR. TISI: -- it was a pleasure working  
3 with you.  
4 (Telephonic conference concluded at 3:45 p.m.)

5

6

7 C E R T I F I C A T E

8

9 I certify that the foregoing is a correct

10

11 transcript from the record of proceedings in the  
12 above-entitled matter.

13

14 s/Carol D. Hill, RPR 5/15/08

15 Carol D. Hill, R.P.R. Date  
16 Carol D. Hill & Associates  
17 55 Public Square, Suite 935  
18 Cleveland, OH 44113  
19 216-687-0005

20

21

22

23

24

25

9 (Pages 30 to 31)

CAROL D. HILL & ASSOCIATES  
216-687-0005

4dcaa55a-6e8a-4bb0-8679-0401671c9139

## **EXHIBIT F**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: GADOLINIUM-BASED  
CONTRAST AGENTS PRODUCTS  
LIABILITY LITIGATION  
(MDL No. 1909)  
-----  
THIS DOCUMENT IS APPLICABLE TO:  
  
ALL CASES

)  
) Case No. 1:08-gd-50000  
)  
)  
) Judge Dan Aaron Polster  
)  
)  
)  
)  
)  
)  
)

**CASE MANAGEMENT ORDER NO. 2**  
**(Establishing Plaintiffs' Steering Committee)**

**IT IS HEREBY ORDERED THAT:**

1. Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the above-captioned actions, and any subsequently filed or transferred actions related to the claims asserted in these cases, are hereby coordinated for all pretrial purposes. This action shall be captioned "*In re Gadolinium Based Contrast Agents Products Liability Litigation*," and the file shall be maintained under Master File No. MDL No. 1909.
2. This Order, and any additional case management orders entered in this litigation, shall govern each case coordinated in MDL No. 1909.
3. Peter W. Burg of the law firm of Burg Simpson Eldredge Hersh & Jardine and Troy Rafferty of Levin Papantonio Thomas Mitchell Eschner & Proctor shall serve as Co-Chairs of the PSC and Executive Committee. Peter J. Brodhead of the law firm Spangenberg, Shibley & Liber shall serve as Plaintiffs' Liaison Counsel.



4. This Court hereby appoints a Plaintiffs' Executive Committee ("PEC") which shall consist of the following attorneys:

Peter W. Burg, Co-Chair  
Burg Simpson Eldredge Hersh Jardine, P.C.  
40 Inverness Drive East  
Englewood, CO 80112  
Tel: (303) 792-5595  
Fax: (303) 708-0527  
[pburg@burgsimpson.com](mailto:pburg@burgsimpson.com)

Troy Rafferty, Co-Chair  
Levin Papantonio Thomas Mitchell Eschner &  
Proctor, P.A.  
316 South Baylen Street, Suite 600  
Pensacola, Florida 32502  
Tel: (850) 435-7000  
Fax: (850) 435-7020  
[trafferty@levinlaw.com](mailto:trafferty@levinlaw.com)

Peter J. Brodhead, Plaintiffs' Liaison Counsel  
Spangenberg, Shibley & Liber, LLP  
1900 East Ninth Street, Suite 2400  
Cleveland, OH 44114  
Tel: (216) 696-3232  
Fax: (216) 696-3924  
[pbrodhead@spanglaw.com](mailto:pbrodhead@spanglaw.com)

Christopher A. Seeger  
Seeger Weiss LLP  
One William Street  
New York, New York 10004  
Tel: (212) 584-0700  
Fax: (212) 584-0799  
[cseeger@seegerweiss.com](mailto:cseeger@seegerweiss.com)

Steve Skikos  
Skikos, Crawford, Skikos, Joseph & Millican  
LLP  
625 Market Street, 11<sup>th</sup> Floor  
San Francisco, CA 94105  
Tel: (415) 956-5257  
Fax: (415) 956-4416  
[sskikos@lopez-hodes.com](mailto:sskikos@lopez-hodes.com)

5. This Court hereby appoints a Plaintiffs' Steering Committee ("PSC") which shall consist of the following attorneys:

Peter W. Burg, Co-Chair  
Burg Simpson Eldredge Hersh Jardine, P.C.  
40 Inverness Drive East  
Englewood, CO 80112  
Tel: (303) 792-5595  
Fax: (303) 708-0527  
[pburg@burgsimpson.com](mailto:pburg@burgsimpson.com)

Troy Rafferty, Co-Chair  
Levin Papantonio Thomas Mitchell Eschner &  
Proctor, P.A.  
316 South Baylen Street, Suite 600  
Pensacola, Florida 32502  
Tel: (850) 435-7000  
Fax: (850) 435-7020  
[trafferty@levinlaw.com](mailto:trafferty@levinlaw.com)

Peter J. Brodhead, Plaintiffs' Liaison Counsel  
Spangenberg, Shibley & Liber, LLP  
1900 East Ninth Street, Suite 2400  
Cleveland, OH 44114  
Tel: (216)696-3232  
Fax: (216) 696-3924  
[pbrodhead@spanglaw.com](mailto:pbrodhead@spanglaw.com)

Steve Skikos  
Skikos, Crawford, Skikos, Joseph & Millican  
625 Market Street, 11<sup>th</sup> Floor  
San Francisco, CA 94105  
Tel: (415) 956-5257  
Fax: (415) 956-4416  
[sskikos@lopez-hodes.com](mailto:sskikos@lopez-hodes.com)

Howard Nations  
Law Offices of Howard Nations  
4515 Yoakum Blvd.  
Houston, TX 77006  
Tel: (713) 807-8400  
Fax: (713) 807-8423  
[nations@howardnations.com](mailto:nations@howardnations.com)

Roger Denton  
Schlichter Bogart & Denton  
100 South 4<sup>th</sup> Street, Suite 900  
St. Louis, MO 63102  
Tel: (314) 621-6115  
Fax: (314) 621-7151  
[rdenton@uselaws.com](mailto:rdenton@uselaws.com)

Mark Robinson, Jr.  
Robinson Calcagnie & Robinson Inc.  
620 Newport Center Drive, 7<sup>th</sup> Floor  
Newport Beach, CA 92660  
Tel: (949) 720-1288  
Fax: (949) 720-1292  
[mrobinson@rcrlaw.net](mailto:mrobinson@rcrlaw.net)

Jerrold Parker  
Parker Waichman Alonso LLP  
27399 Riverview Center Blvd., Suite 106  
Bonita Springs, FL 34134  
Tel: (239) 390-1000  
Fax: (239) 390-0055  
[jparker@yourlawyer.com](mailto:jparker@yourlawyer.com)

Christopher A. Seeger  
Seeger Weiss LLP  
One William Street  
New York, New York 10004  
Tel: (212) 584-0700  
Fax: (212) 584-0799  
[cseeger@seegerweiss.com](mailto:cseeger@seegerweiss.com)

Michelle Parfitt  
Ashcraft & Gerel  
2000 L Street, N.W., Suite 400  
Washington, D.C.20036  
Tel: (202) 783-6400  
Fax: (202) 416-6392  
[mparf@aol.com](mailto:mparf@aol.com)

Russ Briggs  
Fibich, Hampton, Leebron & Garth  
Five Houston Center  
1401 McKinney, Suite 1800  
Houston, TX 77010  
Tel: (713) 751-0025  
Fax: (713) 751-0030  
[rbriggs@fhl-law.com](mailto:rbriggs@fhl-law.com)

Barry Hill  
Hill Williams  
89 12th Street,  
Wheeling, WV 26003  
Tel: (304) 233-4966  
Fax: (304) 233-4969  
[bhill@hwlaw.us](mailto:bhill@hwlaw.us)

Tobias Milrood  
Pogust Braslow & Millrood, LLC  
8 Tower Bridge, Suite 1520  
161 Washington Street  
Conshohocken, PA 19428  
Tel: (610) 941-4204  
Fax: (610) 941-4245  
[tmillrood@pbmattorneys.com](mailto:tmillrood@pbmattorneys.com)

Jayne Conroy  
Hanly Conroy Bierstein Sheridan Fisher &  
Hayes LLP  
112 Madison Avenue  
New York, NY 10016  
Tel: (212) 784-6402  
Fax: (212) 784-6420  
[jconroy@hanlyconroy.com](mailto:jconroy@hanlyconroy.com)

Ramon Rossi Lopez  
Lopez McHugh LLP  
100 Bayview Circle, Suite 5600  
Newport Beach, CA 92660  
Tel: (949) 737-1501  
Fax: (949) 737-1504  
[rlopez@lopezmchugh.com](mailto:rlopez@lopezmchugh.com)

Larry Gornick  
Levin Simes Kaiser & Gornick LLP  
44 Montgomery Street, 36th floor  
San Francisco, CA 94104  
Tel: (800) 901-4001  
Fax: (415) 981-1270  
[lgornick@lskg-law.com](mailto:lgornick@lskg-law.com)

6. This Court hereby appoints the following attorneys as Federal-State Court Liaison to the PSC:

David R. Buchanan  
Seeger Weiss LLP  
One William Street  
New York, NY 10004  
Tel: (212) 584-0700  
Fax: (212) 584-0799  
[dbuchanan@seegerweiss.com](mailto:dbuchanan@seegerweiss.com)

Tor Hoermann  
Simmons Cooper LLC  
707 Berkshire Blvd.  
East Alton, IL 62024  
Tel: (618) 259-2222  
Fax: (618) 259-2251  
[thoerman@simmonscooper.com](mailto:thoerman@simmonscooper.com)

Ramon Rossi Lopez  
Lopez McHugh LLP  
100 Bayview circle, Suite 5600  
Newport Beach, CA 92660  
Tel: (949) 737-1501  
Fax: (949) 737-1504  
[rlopez@lopezmchugh.com](mailto:rlopez@lopezmchugh.com)

7. Responsibilities of the PSC include:

1. Discovery

(a) Initiate, coordinate, and conduct all pretrial discovery on behalf of all

Plaintiffs who file civil actions in this Court or that are transferred to this Court pursuant to 28

U.S.C. § 1407, which contain any cause of action relating to a Gadolinium Contrast Dye, whether on an individual or class action basis;

(b) Develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all Plaintiffs;

(c) Cause to be issued in the name of all Plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation. Similar requests, notices, and subpoenas may be caused to be issued by the PSC upon written request by an individual attorney in order to assist him/her in the preparation of the pretrial stages of his/her client's particular claims; and

(d) Conduct all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all Plaintiffs including appointing lawyers to conduct depositions.

2. Hearings and Meetings

(a) Call meetings of counsel for Plaintiffs for any appropriate purpose, including coordinated responses to questions of other parties or of the Court;

(b) Initiate proposals, suggestions, schedules, or joint briefs, and for any other appropriate matter(s) pertaining to pretrial proceedings;

(c) The PSC or lawyers designated by them shall examine witnesses and introduce evidence at hearings on behalf of Plaintiffs; and

(d) The PSC or lawyers designated by the PSC shall act as spokesperson for all Plaintiffs at pretrial proceedings and in response to any inquiries by the Court, subject of course to the right of any Plaintiffs counsel to present non-repetitive individual or different positions as permitted by the Court.

3. Miscellaneous

(a) All communications by Plaintiffs with the Court should be through the Co-Chairs of the PEC or Plaintiffs' Liaison Counsel. If circumstances require direct correspondence with the Court by any individual counsel, copies of any said communications shall be served using the Court's electronic filing system;

(b) The PSC or lawyers designated by them shall submit and argue any verbal or written motions presented to the Court or on behalf of the PSC and all Plaintiffs as well as oppose when necessary any motions submitted by the Defendant or other parties that involve matters within the sphere of the responsibilities of the PSC (this provision does not apply to motions specifically directed to individual plaintiffs and their counsel);

(c) The PSC or lawyers designated by them shall negotiate and enter into stipulations with Defendants' Lead and Liaison Counsel regarding this litigation;

(d) The PSC or lawyers designated by them are authorized to explore, develop, pursue, and recommend settlement options pertaining to any claim or portion thereof of any case filed in this litigation;

(e) The PEC and PSC shall establish committees to enable the orderly and efficient prosecution of these actions;

(f) The PSC or lawyers designated by them shall maintain adequate files of all pretrial matters and have them available, under reasonable terms and conditions, for examination by Plaintiffs or their attorneys;

(g) The PEC and PSC are authorized to call meetings of plaintiffs' counsel when appropriate and to consult with plaintiffs' counsel on matters of common concern;

(h) The PSC or lawyers designated by them shall perform any tasks necessary

and proper for the PSC to accomplish its responsibilities as defined by the Court's orders;

(i) The PSC or lawyers designated by them shall perform such other functions as may be expressly authorized by further orders of this Court; and

(j) Except as to matters relevant only to a specific case, counsel that represent a plaintiff or plaintiffs who wish to initiate discovery or file motions must first seek authorization from the PEC to initiate such motions or discovery. If such authorization is granted, counsel that wishes to initiate discovery or file motions must provide written notification of such authorization within said discovery or motion papers. If after reasonable consultation with the PEC and for good cause, such counsel disagrees with the PEC's determination, then counsel may petition the Court for relief to initiate such discovery or motions.

(k) The PSC or lawyers designated by them shall create a method for reimbursement for costs and/or fees for services will be set at a time and in a manner established by subsequent order of the Court.

8. In addition to serving on the PSC, the responsibilities of Plaintiffs' Liaison Counsel shall include:

(a) To receive and distribute to plaintiffs' counsel, as appropriate, orders, notices and correspondence from the Court;

(b) To coordinate the filing of notices and papers by members of the PEC, PSC and all plaintiffs' counsel, including the designation of responsibilities to encourage the filing of a single set of papers by counsel in situations where such group members have a common position;

(c) To maintain and distribute to the Court, to counsel for plaintiffs, and to counsel for defendants an up-to-date comprehensive Service List of all plaintiffs' counsel;

(d) To make himself available for any telephone conferences convened by the Court and to communicate the substance of any such telephone conference to all other Plaintiffs' counsel;

(e) To receive and distribute pleadings, Orders, and motions to Plaintiffs' counsel by overnight courier service or telecopier within three business days after receipt, unless such service has been waived, in writing, by a receiving counsel;

(f) To maintain and make available to all Plaintiffs' counsel of record at reasonable hours a complete file of all documents served by or upon each party;

(g) To carry out such other duties as the Court may Order; and

(h) Liaison Counsel shall be entitled to seek reimbursement for costs expended at the time and in a manner approved by the Court.

SO ORDERED:

DATED: March 24th, 2008

/s/Dan Aaron Polster  
HONORABLE DAN AARON POLSTER  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2011, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Illinois, using the electronic case filing system of the Court, via first class mail for those who do not have identified email addresses on the CM/ECF case filing system and the below referenced attorneys not referenced on the CM/ECF service list:

/s/ James Ronca

Vincent J. Moccio  
Genevieve M. Zimmerman  
2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402-2015  
(612)-349-8500

Caleb L H Marker  
Ridout & Lyon LLP  
555 East Ocean Boulevard Suite 500  
Long Beach, CA 90802  
562-216-7380  
Email: [c.marker@ridoutlyonlaw.com](mailto:c.marker@ridoutlyonlaw.com)

Ari Kresch  
Kresch Oliver  
Suite 100  
24100 Southfield Road  
Southfield, MI 48075  
248-327-6556  
Email: [akresch@1800lawfirm.com](mailto:akresch@1800lawfirm.com)

Alyson Oliver  
KRESCH OLIVER PLLC  
24100 Southfield Road  
Southfield, MI 48075

Andrew L Davick  
Anthony J Nemo  
Meshbesher & Spence, Ltd



1616 Park Ave S  
Mpls, MN 55404  
612-339-9121  
Fax: 612-339-9188  
Email: [adavick@meshbeshher.com](mailto:adavick@meshbeshher.com)  
Email: [tnemo@meshbeshher.com](mailto:tnemo@meshbeshher.com)

Chad A. Dudley  
Dudley DeBosier  
1075 Government St.  
Baton Rouge, LA 70809  
225-379-3333  
Email: [cdudley@dudleydebosier.com](mailto:cdudley@dudleydebosier.com)

Daniel Christopher Burke  
Parker Waichman Alonso LLP  
6 Harbor Park Drive  
Port Washington, NY 11050  
Email: [dburke@yourlawyer.com](mailto:dburke@yourlawyer.com)

Douglas Robert Plymale  
Plymale Law Firm  
One Canal Place  
365 Canal St.  
Suite 1000  
New Orleans, LA 70130  
504-355-0092  
Email: [dplymale@dugan-lawfirm.com](mailto:dplymale@dugan-lawfirm.com)

Douglas A. Kreis  
Aylstock, Witkin, Kreis & Overholtz, Pllc  
17 East Main Street  
Suite 200  
Pensacola, FL 32502  
(850) 202- 1010  
Fax- (850) 916- 7449  
Email: [dkreis@awkolaw.com](mailto:dkreis@awkolaw.com)

Herbert Orlandah Phillips, IV  
Mcguire Wood & Bissette

48 Patton Ave  
Asheville, NC 28802  
(828)- 254-8800  
Email: [hphillips@mwbavl.com](mailto:hphillips@mwbavl.com)

John Jeremy Mahoney  
Mahoney & Mahoney  
P.O. Box 335  
Center, ND 58530  
701-794-8769  
Email: [jmahoney@westriv.com](mailto:jmahoney@westriv.com)

Jon C. Peeler  
The Norman Law Building  
213 Third Avenue, N  
Nashville, TN 37201  
(615)- 250- 8000  
Fax: (615)- 250-8073  
Email: [jonpeeler@aol.com](mailto:jonpeeler@aol.com)

Joseph A. Osborne, Esquire  
Babbitt, Johnson, Osborne & LeClainche, P.A.  
1641 Worthington Road, Suite 100  
West Palm Beach, FL 33409  
Email: [Jaosborne@babbitt-johnson.com](mailto:Jaosborne@babbitt-johnson.com)

Kevin Patrick Weir  
Goldberg & Simpson, LLM  
9301 Dayflower Street  
Louisville, KY 40059  
502-589-4440  
Fax: 502-581-1344

Michael A. London  
Douglas & London  
111 John Street, 8<sup>th</sup> floor  
New York, NY 10038  
Email: [mlondon@douglasandlondon.com](mailto:mlondon@douglasandlondon.com)

Paul J Pennock

WEITZ & LUXENBERG PC  
700 Broadway  
New York, NY 10003  
(212)-558- 5504  
Fax: (212)- 363-2721  
Email: [PPennock@weitzlux.com](mailto:PPennock@weitzlux.com)

Richard J. Arsenault, Esquire  
NEBLETT, BEARD & ARSENAULT  
2220 Bonaventure Court  
P.O. Box 1190  
Alexandria, LA 71309  
Email: [rsenault@nbalawfirm.com](mailto:rsenault@nbalawfirm.com)

Jason J. Thompson  
Sommers Schwartz, P.C.  
2000 Town Center, Suite 900  
Southfield, MI 48075  
248-355-0300  
[jthompson@sommerspc.com](mailto:jthompson@sommerspc.com)

Sheila M. Bossier  
1520 N. State Street  
Jackson, MS 39202  
601-352-5450  
Fax: 601-352-5452  
[sbossier@bossier-law.com](mailto:sbossier@bossier-law.com)

Stacy K. Hauer, Esq.  
Johnson Becker, PLLC  
33 South Sixth Street, Suite 4530  
Minneapolis, MN 55402  
Email: [shauer@johnsonbecker.com](mailto:shauer@johnsonbecker.com)

Mark E. Gebauer  
Ecker Seamans Cherin & Mellott, LLC  
213 Market Street  
Eighth Floor  
Harrisburg, PA 17101  
717-237-6052

Fax: 717-237-6019

Email: [mgebauer@eckertseamans.com](mailto:mgebauer@eckertseamans.com)

Kurt Edward Stitcher

Baker & Daniels LLP

311 S. Wacker Drive

#4400

Chicago, IL 60606

312-212-6500

Email: [kurt.stitcher@bakerd.com](mailto:kurt.stitcher@bakerd.com)